



Robert Turner

STATE REPRESENTATIVE
TO THE 61ST ASSEMBLY DISTRICT

**Testimony on 2009 Assembly Bill 330
State Representative Robert Turner
Assembly Committee on Elections and Campaign Reform
September 15, 2009**

Good afternoon and thank you Chairman Smith and Committee members for hearing this important legislation.

Assembly Bill 330 is a bill that would simplify the absentee voting process for members of the military and Wisconsin citizens living overseas. The LRB analysis of the bill lists the definitions of military and overseas electors that are subject to the bill's provisions. ~~This legislation applies only to federal elections for President and the United States Congress.~~

Currently, an elector who casts an absentee ballot must make and subscribe to a certificate before one witness who must be an adult U.S. citizen. The certificate affirms the elector's residence and voting eligibility and affirms the ballot is voted in secret.

Assembly Bill 330 eliminates this requirement for the above categories of voters. Last Fall, in the weeks leading up to the November 2008 election, I was contacted by a constituent living in England who was having great difficulty finding a witness for her absentee ballot. She had contacted the Racine City Clerk, who



informed her that the law definitely required a witness in order for her vote to be counted.

When my constituent first contacted me, I confirmed this with Mr. Kevin Kennedy, Director and General Counsel of the Government Accountability Board. In fact, Mr. Kennedy had already been made aware of the situation by the Racine City Clerk. He had also heard about other Wisconsin residents living abroad who were having difficulties finding a suitable witness for their absentee ballots. In addition, Senator John Lehman received a communication from another Racine resident who was visiting India and wanted to vote absentee.

My constituent, who had begun the absentee ballot process with plenty of time to spare, ended up having to pay for a four hour train trip to London in order to find an adult U.S. citizen to witness her ballot. Thankfully, her absentee ballot did reach the City of Racine in time to be counted.

During this process and after the election, Kevin Kennedy followed up with me and informed me that the Federal Voting Assistance Program, which works to facilitate voting for military and overseas electors, had recommended that Wisconsin eliminate this requirement for those voters. Therefore I decided to get this recommendation drafted as legislation. I decided to introduce this bill to ensure that no overseas Wisconsin residents or members of the military would be disenfranchised in the future.

This bill also deletes a requirement that every absentee voter must certify that he or she is unable or unwilling to appear at the polling place for his or her residence on

election day or has changed his or her residence within the state within ten days of the election.

In developing this legislation, I have worked closely with Mr. Kennedy on the technical aspects of the bill's language. I would appreciate your favorable consideration of Assembly Bill 330.

To: Assembly Committee on Elections and Campaign Reform

Date: September 15, 2009

From: Paul Malischke

Subject: AB-330, Requirements for electors who vote by absentee ballot

This bill deals with absentee ballots, an important area that needs improvement. Section 5 wisely removes the statutory requirement for specific language on the certificate envelope for the absentee ballot. The existing statute results in an envelope that has excess verbiage, and a font that is too small for many to read. The current envelope causes confusion, and many simply do not read it before signing.

Please consider amending AB-330 as described below.

1) Add a clause that specifically defines the criteria for the pollworkers to reject absentee ballots. It appears that the existing statutes and the bill are ambiguous.

For recounts, the statute 9.01 (1) (b) 2 clearly describes a defective absentee ballot. Section 7 of the bill amends this clause. However, there does not appear to be a similar specific instruction for pollworkers on Election Day. Statute 6.88 (3) (a) and 7.52 (3) vaguely state, "When the inspectors find that the certification has been properly executed, ...". Presumably, this refers to 6.87 (2), which refers to all absentee ballots and is substantially amended by the bill in Section 5. This clause in the bill includes requirements:

- That the witness be a U.S. citizen
- That the witness provide their address
- That the military elector shall provide their identification serial number

If the voter does not provide these, should the ballot be rejected at the polling place since it is not properly executed?

Instead of the vague clause in 6.88 (3) (a), please add an additional clause that instructs pollworkers on what ballots should be set aside, using the same criteria as the clause for recounts, 9.01 (1) (b) 2, namely:

- If not witnessed
- If not signed by the voter
- Or if the certificate accompanying an absentee ballot that the voter received by fax or email is missing.

2) For all absentee ballots, **eliminate the requirement that the witness be a U.S. citizen.**

According to existing statute 9.01 (1) (b) 2, the recount canvass board does not reject the ballot if the witness is not a citizen. Even if this were desirable, we would have no way to enforce it on a routine basis, since there is no list of citizens. However, this might be a source of litigation in a highly contested recount such as the recent Minnesota recount. Before 2006 there was no requirement for the witness to be a citizen.

3) **Retain the requirement for a witness for all absentee ballots.**

The witness' signature adds to the security of the ballot, helping to verify that the proper person has received the ballot and filled it out. If this requirement is unevenly legislated, it will be unfair to hold those living within the state borders to a higher standard. Please keep the requirements the same for all voters, and avoid complicating election administration by having different criteria and different forms.

Notably, the U.S. Senate's S1415 Military and Overseas Empowerment Act does not eliminate the requirement for a witness, but it does forbid states from requiring the witness to be a notary. It seems unlikely that there would be individuals in such a remote location that there would be no adults able to witness their ballot.

4) **Add a clause to assure privacy for people voting absentee in the clerks office,** similar to the assurance of privacy at polling places mandated in existing 5.35 (2): "The booths shall have a surface on which to write or work and be sufficiently enclosed to assure privacy for the elector and anyone lawfully assisting the elector while marking the elector's ballot."

5) **Add a clause that requires the GAB to promulgate security rules for voted absentee ballots before they are tallied.** Neither the existing administrative rule Chapter 5 on ballot security, nor the GAB's proposed rule changes published in August 2008, contains anything specific to absentee ballots before they are tallied. Some items to be addressed would be security in the clerk's office, and during transport of the ballots to the polling place.

The above amendments provide uniformity in handling different voters, eliminate an unnecessary requirement, clarify ambiguities, and rectify important omissions in existing law. Thank you for your consideration.